

Office of the Secretary

FS/L4-3(410117)P

DEPARTMENT OF THE NAVY

Washington

March 7, 1941

Sirs:

By letter of December 19, 1940, No. EN12/General (Resp. 131), to the Supervisor of Shipbuilding, USN, the Contractor refers to Article 3(d) of the General Provisions forming part of contracts executed by him since July 1, 1940, for the construction of Naval vessels, which provides under the caption "Special Plant Protection" as follows:

"(d) In addition to the ordinary precautions heretofore adopted by the contractor for the guarding and protection of its plant and work, the contractor shall provide such additional watchmen and devices for the protection of its plant and property and the work in process for the Department against espionage, acts of war, and acts of enemy aliens as may be required by the Secretary of the Navy. The additional cost thereof shall be treated as a change under this contract."

The Contractor states that he has complied with the foregoing provision of the contracts which has resulted in increased cost of facilities and also increased plant operating costs, and that the operating expense will be current and will continue during the construction period of each vessel. He requests that a general change for all contracts covering the increased cost involved for special plant protection be authorized, and that current operating costs, as submitted by him, be adjudicated by the Change Board each month, and that payments, as earned, be made monthly by the Navy Department.

The procedure proposed by the Contractor is, in general, satisfactory to the Navy Department. In order that the Bureau of Ships may issue the proper administrative instructions in the matter to all Supervisors of Shipbuilding, the Secretary of the Navy hereby modifies Article 3(d),

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quoted above, of Contracts N0d-1430, N0d-1432, N0d-1433, N0d-1497, N0d-1500, N0d-1503, N0d-1642, and N0d-1732, to read as follows:

" (d) In addition to the ordinary precautions heretofore adopted by the Contractor for the guarding and protection of its plant and work, the Contractor shall provide, as may be required by the Secretary of the Navy, or the Chief of the Bureau of Ships as his duly authorized representative, such additional watchmen and devices for the protection of its plant and property and the work in process for the Department against espionage, acts of war, and acts of enemy aliens. The additional cost thereof shall be treated as a change under this contract."

It is requested that the receipt of this letter be acknowledged.

Respectfully,

/s/ James Forrestal

Acting Secretary of the Navy.

Federal Shipbuilding and
Dry Dock Company,
Kearny, New Jersey.

with principal errors during the construction of assistance to an inspection of each plan, lists, schedules, etc., will be treated as a charge to the work or assembly and delivery of lists, etc., required by the Department for assembling or assembling and delivery. Each plan, etc., for the assembly or invention shown or listed in the right to the Government in the construction of other work, the construction of the work, and the specifications) shall be subject to the specifications) shall be subject to the specifications)

CC: BuShips, SupShip., Kearny, N.J., BuS&A, CompBD (2), G.A.O. (Audit Div.)

test by Government inspectors at any and all times during the manufacture or production of such material or, as the case may be, during the construction period, and at any and all times when such manufacture or production are carried on or, as the case may be, at the plant of the contractor.

(b) The Department shall promptly approve all work and material conforming to the requirements of this contract, and may reject all work and material not conforming thereto. Rejected work shall be satisfactorily corrected and rejected material shall be replaced with factory material without charge therefor, and the contractor shall promptly segregate and remove the rejected material.

(c) The contractor shall furnish promptly, without additional charge, all reasonable facilities, information, and tests that may be required by the inspectors. All inspection, examination, and tests shall be performed in such manner as not unnecessarily to delay the work. Special, full-size, and performance tests shall be as described in the specifications.

(d) All workmanship, equipment, materials, and articles incorporated in the work covered by this contract are to be in accordance with the specifications which form a part of this contract.

(e) (a) The vessel/vessels and all materials and appliances provided by either the contractor or the Department for and used or to be used in the construction thereof shall be kept insured by the contractor in the names of the United States of America and the contractor against the usual builder's risks. The insurance shall be written on the builder's risk insurance plan as may be approved by the Secretary of the Navy, and loss thereunder shall be payable to the Secretary of the Navy for the use of the United States to the extent of payment made to the contractor plus the amount of loss of and/or damage to material and appliances furnished to the Department and for the use of the contractor to the extent of any remaining balance. Certificates of insurance shall be deposited with the Judge Advocate General of the Navy.

(b) In case of loss, damage, and/or expense of the kinds covered by the policies of insurance provided for in this contract, the Department will make no demand on the contractor for or on account of the value of the vessel/vessels, her/their apparel, tackle, ordnance, furniture, and furnishings beyond the amount of insurance the contractor is required to carry under the contract. In the event of loss and/or damage to the vessel/vessels and/or materials and appliances therefor in excess of the amount required to be covered by insurance, the Secretary of the Navy may, in his discretion, order the contractor to proceed with the work of repair or replacement, the cost thereof, to the extent of the insurance required, to be borne by the contractor and/or the underwriters, on payment orders duly indorsed by the Secretary of the Navy, the cost of said work, over and above the amount of insurance required, to be borne by the Government and determined in the manner provided in the contract for determining the increased cost of changes and paid to the contractor as a change, or order the contractor to continue all work on the vessel/vessels on receipt of which order the contractor's obligation to construct the vessel/vessels under the contract shall cease and determine, and the Department be entitled to all sums payable under the insurance required to be placed up to the amount of loss, and the Department will pay to the contractor all sums theretofore earned under the contract and not previously paid, and in addition thereto all extra costs and expenses to the contractor, by reason of the ceasing and determination of such obligation, which extra costs and expenses shall include (1) the cost of care of the damaged vessel/vessels and parts therefor and in disposition thereof as the Secretary of the Navy shall direct; (2) any amount for which the contractor shall be liable by reason of the cancellation of orders for material or work that is rendered necessary because of the ceasing and determination of such obligation; (3) reasonable compensation for the use of property of the contractor occupied or required by the damaged vessel or such work until disposition thereof; and (4) any other reasonable expense incurred by the contractor caused by the ceasing and determination of such obligation and by such disposition. The contractor will also be entitled to 8.7 percent of such extra costs and expenses as profit. The amount of such extra costs and expenses shall be determined in the same manner as is provided in the contract for the determination of the amount of compensation payable to the contractor in the case of changes.

(c) Where loss and/or damage occurs amounting in value to less than the extent of the insurance required, the vessel/vessels and/or parts therefor, shall be restored to its/their previous condition by the contractor, who will be reimbursed therefor by the underwriters on payment of sums duly indorsed by the Secretary of the Navy.

(d) The contractor shall hold and save the Department, its officers, agents, servants, and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of the use or manufacture of any patented or unpatented invention, article, or appliance manufactured or used in the performance of the contract, including their use by the Government installed on the vessel/vessels: *Provided, however,* That this requirement shall not be construed to apply to anything supplied by the Department.

(e) (a) In case the construction of the vessel/vessels as a whole is suspended by the Secretary of the Navy, the contractor as soon as practicable after the receipt by it of written notice of suspension shall stop all work in connection with the construction of the vessel/vessels, except such work as the Secretary of the Navy shall direct the contractor to continue; and the contractor during such suspension shall care for the vessel/vessels and for all materials and equipment on hand for the construction thereof, and the contractor shall promptly furnish to the Secretary of the Navy copies of all outstanding orders for materials, equipment, and appliances and place with other parties, and shall take such action relative to such orders as may be directed by the Secretary of the Navy. In case of any such suspension, the Department shall reimburse the contractor for all additional expenses determined by the Compensation Board to have been incurred by reason of such suspension, including (1) the cost of any special work ordered by the Secretary of the Navy that would not have been necessary if the construction of the vessel/vessels had not been suspended; (2) the cost of the care and preservation of the vessel/vessels during the period of suspension; (3) the proper portion of the fixed overhead charges which the vessel/vessels would have borne during the period of suspension, if the construction of the vessel/vessels had not been suspended; (4) any additional payments for which the contractor is liable by reason of the suspension or cancellation of orders for material, equipment, and appliances that may be directed by the Secretary of the Navy; (5) the increased cost, if any, due to the resumption of work after its suspension; (6) any other reasonable expense which the contractor shall have incurred on account of such suspension, including reasonable compensation for the use of property of the contractor occupied or required by the unfinished vessel/

Materials and workmanship.

Insurance.

Patents.

Guarantee of work.

vessels until final disposition thereof. The Department shall also pay to the contractor 8.7 percent of such additional expenses. The Secretary of the Navy will grant an extension in the contract construction period equal to the delay caused by such suspension, which increase shall not in any case be less than the period of such suspension.

Board.

(b) The amount which the Department shall pay to the contractor will be determined by the Compensation Board. As soon as practicable after such suspension is ordered, the Board shall determine the amount to be allowed the contractor as monthly payments, and after such suspension is terminated the Board shall determine the amount in addition to the monthly payments which shall be payable to it on account of such suspension. The amounts so determined, when approved by the Secretary of the Navy (after hearings, if desired by the contractor), shall be the amounts that shall be paid to the contractor in full settlement of the costs of such suspension.

Termination.

10. (a) In case of the failure or omission of the contractor, at any stage of the work prior to its completion, from any cause or causes, to go forward with the work and make satisfactory progress toward its completion within the period prescribed, the Secretary of the Navy for just cause after due hearing may, by written notice to the contractor, terminate its right to proceed with the work. In case the contractor's right to proceed is so terminated, the Department may, when the delays, in the judgment of the Secretary of the Navy, are retarding progress of work to such an extent as to jeopardize completion and delivery of the vessel/vessels within the prescribed time, immediately enter the works and premises of the contractor and take possession of the vessel/vessels and the materials for its/their construction. The Secretary of the Navy thereupon shall cause to be taken and filed a full and complete statement and inventory of all work done or begun in, upon, or about the vessel/vessels and of all materials on hand or on order applicable thereto, or intended therefor, by a board consisting of not less than five persons qualified by knowledge and experience for the discharge of their duties, to be appointed by the Secretary of the Navy, which board shall proceed without unnecessary delay to examine such work and materials, and upon such examination the contractor may attend by representative and, if it so desires, by counsel, and submit evidence.

Completion in event of termination—surrender of plant.

(b) Upon receipt by the Department of the statement and inventory prepared by said board as aforesaid and approved by the Secretary of the Navy, the Department may proceed with the completion of the vessel/vessels in accordance with the contract, including changes therein that may be authorized in accordance with the provisions thereof either at the plant of the contractor or elsewhere, by contract or otherwise, in its discretion, using for that purpose all suitable materials, equipment, and appliances on hand or on order and included in the inventory aforesaid, and may remove the vessel/vessels and materials to such other place or places as may be requisite to the exercise of such discretion. The contractor on receiving notice of the intention of the Department to proceed with the completion of the work will surrender the vessel/vessels and all such materials, equipment, and appliances, together with the use, so far as required, of the plant of the contractor, and all machinery, tools, and appliances appertaining thereto and theretofore used, or necessarily to be used, in and about the finishing of the work. The completing of the vessel/vessels shall be carried on without unnecessary delay, and shall be at the expense of the contractor, who shall be chargeable with any increase in the cost of materials or labor incurred by reason of its failure to perform this contract, and with the cost of correcting any improper or defective work discovered in such parts of the vessel/vessels as may have been constructed by the contractor, or of replacing any defective material furnished by it except as hereinafter otherwise provided.

(c) If, in the judgment of the Secretary of the Navy, such failure or omission shall have been due to fire or to causes beyond the control and without the fault or negligence of the contractor, including but not restricted to acts of God or of the public enemy, acts of the Government, flood, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather or delays of subcontractors due to such causes, then the contractor, without restricting the right of the Secretary of the Navy under this article, shall be entitled to payment for all work done to the date of the receipt of notice of termination in the same manner and to the same extent as if the contract had been cancelled in accordance with the provisions of Article 11 hereof. If, however, in the judgment of the Secretary of the Navy, such failure or omission shall have been due to other causes, then in making the final settlement of the liability of the contractor an account shall be stated substantially as follows:

Account stated.

(1) With all payments made to it under the contract less such payments, if any, as may have been refunded.

(2) With the cost of material and labor and all other expenses incurred by or on behalf of the Department, in finishing the work in accordance with the contract and changes duly authorized at the time the contractor's right to proceed with the work was terminated.

(d) If the total amount thus charged against the contractor shall exceed the contract price of the vessel/vessels, plus the net extras, if any, at the time of the termination of such right, the contractor shall pay such excess, on demand, and the payment thereof shall be accepted by the Department in full discharge of all its claims under this contract. Should said amount, however, be less than said contract price plus the net extras, if any, at the time of said termination, the deficiency shall be paid to and accepted by the contractor in full discharge of all its claims under this contract: *Provided, however,* That said deficiency shall not exceed the contract value of the materials, equipment, and appliances delivered and the work done by the contractor less previous payments made to it.

Cancellation.

11. (a) In case this contract is cancelled by the Secretary of the Navy for any cause other than that stated in Article 10, the contractor, as soon as practicable after the receipt by it of written notice of the cancellation hereof, shall stop all work in connection with the construction of the vessel/vessels, except such work as the Secretary of the Navy shall direct the contractor to continue. If this contract is thus cancelled, the contractor shall be entitled to payment, with profit at 8.7 percent, of the cost of all work done to the date of receipt of said notice of cancellation and the Department will reimburse the contractor for all additional expenses determined by the Compensation Board to have been incurred by reason of such cancellation, including (1) the cost of any special work directed by the Secretary of the Navy that would not have been necessary if this contract had not been thus cancelled; (2) the cost of the care and preservation of the vessel/vessels prior to removal or other disposition as directed by the Secretary of the Navy; (3) the proper portion of the fixed overhead charges which the vessel/vessels would have borne had this contract not been cancelled; (4) any other reasonable expenses.

Reply to
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